

Article 13 | Flood Protection

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Sec. 13.1 General

13.1.1 Applicability

The Flood Protection regulations of this article shall apply to all lands within the 100-year floodplain of Town Branch Creek, Dry Mill Branch Creek, Cattail Branch Creek, Big Springs, Tuscarora Creek and other waterways as identified in the National Flood Insurance Program Flood Insurance Rate Maps for Loudoun County, Virginia and Incorporated Areas, effective date July 5, 2001, based on the Flood Insurance Study for Loudoun County, Virginia and Incorporated Areas, published by the Federal Emergency Management Agency (FEMA) effective date July 5, 2001, as modified from time to time by a Letter of Map Revision (LOMR) issued by FEMA.

13.1.2 Floodplain Boundary Changes

Floodplain boundaries are subject to change with approved FEMA Letters of Map Revision. Such floodplain boundary changes do not require Town Council approval of a zoning map amendment.

13.1.3 Zoning Permits; Compliance with Applicable Regulations

All uses, activities and development occurring within any floodplain shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of this Zoning Ordinance and with all other applicable codes and ordinances including the Virginia Uniform Statewide Building Code. Prior to the

issuance of any such permit, the Zoning Administrator shall require all applications to include compliance with all applicable State and Federal laws.

13.1.4 Prohibited Activities

Under no circumstances shall any use, activity and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch or any drainage facility or system. No development shall be permitted in the Floodplain except where the effect of such development on flood heights is fully offset by accompanying improvements that have been approved by all appropriate authorities. The placement of any mobile home within the Floodplain is prohibited, except in an existing mobile home park or subdivision.

13.1.5 State and Federal Approval

Approval shall be obtained from FEMA & Virginia Department of Conservation and Recreation (DCR) when applicable prior to any proposed alteration or relocation of any channels, watercourse or stream within the town.

13.1.6 Notification

At the time of submission of a floodplain study to the Town that indicates an offsite increase in any FEMA regulatory floodplain elevation the applicant shall provide written notification to all property owners for which the floodplain study shows a base flood elevation rise. The applicant shall also provide written notification to all jurisdictions whose regulations govern any portion of land affected by the flood elevation increase or are adjacent to a property that has a base flood elevation rise. In addition, if subsequent revisions to the floodplain study result in an offsite increase in any of the FEMA regulatory base flood elevations on additional properties not provided written notification originally, the applicant shall then send written notification to these additionally affected properties and jurisdictions.

Proper proof of notification as well as a sample of the notification letter shall be provided by the applicant (to the Town) as part of their completed CLOMR application package in accordance with FEMA requirements.

13.1.7 Easement Required

The applicant is responsible for obtaining floodplain easements from affected landowners for any increase in base flood elevation that will occur offsite as a result of an applicant's proposed plan to physically alter the floodplain in conjunction with the applicant's proposed development. The applicant shall provide copies of such easements and proof of recordation to the Town prior to the Town's approval of construction, subdivision, or site plans. Should the as-built information required with FEMA's LOMR application or other Town criteria cause an increase of the base flood elevation that reaches outside of the recorded off site floodplain easement(s), the applicant shall either make the required field changes as shown on the approved construction documents (and submit an updated as-built) or obtain a larger floodplain easement from the affected landowners to encompass the increased base flood elevation. If land is affected in Loudoun County as well as the Town, the applicant shall provide copies of such easements and proof of recordation to Loudoun County as well.

13.1.8 Disclaimer of Liability

The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside of the 100 year base flood elevations, or

that land uses permitted within such area will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Leesburg or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made there under.

Sec. 13.2 Use Regulations

13.2.1 Permitted Uses

The following uses are permitted in the Floodplain provided that they are not prohibited by any other applicable ordinance and provided that they do not require structures, fill (except for item "E"), or storage of materials and equipment:

- A.** Agricultural uses such as general farming, pasturing, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- B.** Public and private recreational uses and activities such as parks, day camps, picnic grounds, golf courses, boat launching and swimming areas, hiking and horseback riding trails, wildlife and nature preserves, game farms, fish hatcheries and fishing areas. Paved trails are permitted when constructed as part of a Town project public improvement.
- C.** Accessory residential uses such as gardens, play areas, and pervious loading areas.
- D.** Accessory industrial and commercial uses such as parking and loading areas.
- E.** Along the north side of Town Branch between Wirt Street SW and Harrison Street SE, a building used solely for non-residential uses may be located within the floodplain fringe provided it is entirely outside of the floodway and meets the following provisions:
 - 1.** All floors below the 100-year flood level shall be floodproofed up to the 100-year-flood level, and the building, any building extensions, and/or accessory buildings shall be designed to resist uplift and/or horizontal water pressure; provided, that in no event shall any floor below the 100-year-flood level be used for human or animal habitation, food storage or food preparation.
 - 2.** All new and /or replacement public utilities, water mains, sanitary sewers and their appurtenances, shall be designed to be floodproofed to minimize or eliminate infiltration and exfiltration and to insure their structural integrity under flood conditions.
 - 3.** Water heaters, furnaces, air conditioners, electrical distribution panels and other critical mechanical or electrical installations shall not be installed below the 100-year-flood level. Separate electrical circuits shall serve areas below the 100-year-flood level and shall be dropped from above.
 - 4.** A registered professional engineer shall certify the adequacy of the floodproofing design to withstand the stresses of the base flood and such plan shall cite the elevation to which the structure is floodproofed. Such certification shall be provided on a Federal Emergency Management Agency/National Flood Insurance Program Elevation Certificate and/or Floodproofing Certificate as applicable.

5. Prior to approval of any construction plan that proposes a non-residential building within the Floodplain Fringe, the Applicant shall obtain a Conditional Letter of Map Revision (CLOMR) from FEMA that includes FEMA approved floodproofing requirements and is in conformance with all Town and FEMA floodplain requirements.
6. Prior to issuance of any occupancy permit for a non-residential building within the Floodplain Fringe, the applicant shall obtain a Letter of Map Revision (LOMR) from FEMA that verifies the building has been constructed in general conformance to the approved CLOMR elevations and all required floodproofing mechanisms have been properly installed.
7. Adverse impacts to the floodplain and stream channel shall be mitigated using methods specified in the DCSM.

13.2.2 Special Exception Uses

The following uses may be permitted in the Floodplain when reviewed and approved as a Special Exception use in accordance with the procedures of Sec. 3.4, provided that they are not prohibited by this or any other ordinance.

- A. Structures, except for mobile homes, accessory to the uses and activities in Sec. 13.2.1.
- B. Temporary uses such as circuses, carnivals and similar activities.
- C. Storage of materials and equipment provided that they are not buoyant, flammable or explosive, and are not subject to major damage by flooding, or provided that such material and equipment is firmly anchored to prevent flotation or movement, and/or can be readily removed from the area within the time available after flood warning.
- D. Other similar uses and activities provided they cause no increase in flood heights and/or velocities. All uses, activities, and structural developments shall be undertaken in strict compliance with the flood-proofing provisions contained in all other applicable codes and ordinances.

Sec. 13.3 Variances

13.3.1 Additional Factors to be Satisfied

In passing upon applications for Variances, the Board of Zoning Appeals shall be governed by all standards and procedures specified in other sections of this Zoning Ordinance (including those of Sec. 3.1.3) and the following factors:

- A. The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development or activity within the Floodplain that will cause any increase in flood levels during the 100-year flood.
- B. The danger that materials may be swept on to other lands or downstream to the injury of others.
- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.

- D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- E. The importance of the services provided to the community by the proposed facility.
- F. The requirements of the facility for a waterfront location.
- G. The availability of alternative locations for the proposed use not subject to flooding.
- H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- I. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- J. The safety of access to the property for ordinary and emergency vehicles in time of flood.
- K. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.
- L. Such other factors which are relevant to the purposes of this Zoning Ordinance.

13.3.2 Referral for Technical Assistance

The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for protection and other related matters.

13.3.3 General Findings

Variances shall only be issued after the Board of Zoning Appeals has determined that the granting of such will not result in:

- A. Unacceptable or prohibited increases in flood heights;
- B. Additional threats to public safety;
- C. Extraordinary public expense;
- D. Nuisances;
- E. Fraud or victimization of the public; or
- F. Conflict with local law or ordinances.

13.3.4 Hardship Relief Finding

Variances shall only be issued after the Board of Zoning Appeals has determined that the variance will be the minimum relief to any hardship.

13.3.5 Required Notification to Applicant

The Board of Zoning Appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure at or below the 100-year flood elevation:

- A. Increases risks to life and property.

- B. Will result in increased premium rates for flood insurance.

13.3.6 Records

A record of the above notification as well as all variance actions, including justification for their issuance, shall be maintained and any variances that are issued shall be noted in the annual report submitted to the Federal Insurance Administrator.

Sec. 13.4 Existing Structures in Floodplains

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to standards of this section.

13.4.1 Expansion or Enlargement

Existing structures and/or uses located in the Floodplain shall not be expanded or enlarged (unless the effect of the proposed expansion or enlargement on flood heights is fully offset by accompanying improvements).

13.4.2 Modifications and Improvements

- A. Any modification, alteration, repair reconstruction or improvement of any kind to a structure and/or use located in any floodplain to an extent or amount of less than fifty (50) percent of its market value, shall be elevated and/or flood-proofed.
- B. Any modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use in a floodplain to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with the provisions of the Virginia Uniform Statewide Building Code.

Sec. 13.5 Signs in Floodplains

See Sec. 15.10